IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9470 OF 2004

Vishwas Ramchandra Agalave & Ors. ...Petitioners

Versus

Chinchwad Devsthan Trust Pune
and others ...Respondents

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Mr. A.V. Anturkar i/b Mrs. Vinita V. Bakre-Shastry, counsel for Petitioners

Mr. S.V. Pitre, counsel for Respondent No.1.

Mr.A.H. Palekar, A.G.P. for Respondent No.7.

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CORAM: B. H. MARLAPALLE, J.

DATED: 2ND MARCH, 2005

P. C.:-

1. Heard the learned counsel for the respective parties.

2. The petitioner No.1 had approached the Assistant Charity Commissioner at Pune by an application filed U/sec. 41A of the Bombay Public Trust Act, 1950 and it came to be registered as application No. 33 of 2003. The said application came to be rejected by the learned Assistant Charity Commissioner vide his order dated 25.10.2004 and hence, this petition.

3. It was contended before the Assistant Charity

Commissioner that the petitioners are the Pujaries in Shri Chintamani Temple at Theur and it is one of the Ashtavinayaks. In terms of the decree passed in the year 1841, the rights of the Pujaries were decided and subsequently in the year 1890, this High Court had framed a scheme in First Appeal No. 71 of 1886 for the Management of the Chinchwad Sansthan including the Sub Devsthan at Morgaon, Siddhatek and Theur. The said scheme was amended from time to time and the last amendment was in the year 1969 in Civil Appeal No.6 of 1968. It was pointed out that the offerings offered by the devotees to the deity are the income of the Pujaries and the Managing Committee of the respondent No.1 Trust was interfering with the said right which had emanated from the decree passed in the year 1841 as well as the scheme framed by this Court as referred to hereinabove. The petitioner had taken a strong objection to the decision of the Trust to install donation boxes in the temple on the ground that it would adversely affect the earnings of the Pujaries and they moved an application before the Assistant Charity Commissioner, praying therein for directions against the Trust not to install or keep donation boxes in the premises of the temple. The application was opposed by the Trust and the Trustees on various grounds including its Managing Committee. The learned Assistant Charity Commissioner was impressed by the preliminary objection regarding the

maintainability of the application and by the impugned order he held that the application filed U/section 41A of the Bombay Public Trust Act, was not maintainable.

4. Section 41A (1) of the Bombay Public Trust Act, 1950 reads as under:-

> **41A(1)** Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damages, alienated or wrongfully sold, removed or disposed of.

. The above quoted provision has two parts and it was contended by Mr. Anturkar, the learned counsel for the petitioners that the application filed by the

petitioner No.1 came within the ambit of first part viz. the administration of Trust is properly made and installations of the donatin boxes was part of administrative move to increase income of the Trust by appealing the devotees to donate generously. He further submitted that when the petitioners were seeking to exercise their legal recognised rights to receive the offerings made to the deity and there was an allegations that the Trust had created impediments in the said rights the application ought to have been entertained as it squarely fell in the administrative activities of the Trust. These averments have to be sustained and the view taken by the Assistant Charity Commissioner does not appear to be in consonance with the broad scheme of Section 41A(1) of the Act.

5. In normal course, after holding that the application was maintainable before the Assistant Charity Commissioner, the same could have been remanded for fresh decision. But looking at the dispute between the parties and the scheme framed by this Court for the administration of the respondent No.1 Trust, this petition could be disposed of by giving appropriate directions.

6. The respondents do not dispute the rights of the Pujaries that have emanated from the decree passed in the year 1841 and at the same time, it is submitted

that all the Sub-Devsthans are required to be managed strictly as per the scheme formulated by this Court. The Trust has the power to explore resources to increase its income not only for the upkeep of the temples but also for the development of the temple premises and the infrastructure therein. Undoubtedly, additional finances are to be raised for all these activities and therefore, the Trust would be within its rights to seek donations from the devotees who visit the temples.

7. It appears that there is some wrong notions which have led to frictions between the Pujaries and the Trust. Few photographs have been placed before me by the respective parties and they show that two donation boxes have been installed in the premises of the temple at Theur and there is also a Board displayed which appeals for the Abhishek and donations. The Pujaries contend that the money offered to the deity by way of Puja, Archa, Ovalani, Abhishek etc. is a part of their income and the same cannot be denied by the Trust or the Trustees by any means. By and large there is no dispute raised by the Pujaries against the right of the Trust to receive donations from the devotees.

8. The scheme formulated by this Court and on the basis of which, the administration of respondent No.1

Trust is carried out as at present shows that the learned District Judge at Pune has the over all supervision and for all major decisions including the financial decisions, approval in advance is required to be sought by the Trust from the learned District Judge at Pune and therefore, he would be the appropriate authority to hear and appreciate the respective contentions. He should visit the temple at Theur and take such steps as are required to be taken to sort out the differences between the parties in consonance with the decree passed in 1841 as well as the scheme formulated by this Court in 1890. The learned District Judge may also examine the appropriate places where the donation boxes could be installed. However, this would take some time and therefore, it would be necessary that some interim directions are required to be issued in this petition, pending the intervention of the learned District Judge.

9. By way of interim measures, it is directed that the offerings to the deity as made by the devotees for performing the Puja, Archa, Ovalani, Abhishek etc. would be treated to be the income of the Pujaries and the Pujaries in turn would not oppose the donations being given by the devotees or the donation boxes installed in the temple premises. The learned District Judge at Pune would examine the

feasibility of appropriate locations for these donation boxes and he would also work out an appropriate formula regarding the income of the Pujaries in terms of the above service which they render including prescribing appropriate upper limit for such services. In this regard, the learned District Judge may also take into consideration the prevailing practice in other Ashtavinayaks by way of guidance. The Pujaries on their part would not disturb the donation boxes until the learned District Judge comes out with final proposals.

10. The writ petition is disposed of in terms of the above directions.

11. Writ to go forthwith to the learned District Judge, Pune as well as the Assistant Charity Commissioner, Pune.

12. Certified copy is expedited.